

ESTTA Tracking number: **ESTTA471254**

Filing date: **05/07/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053911
Party	Plaintiff Ovation LLC
Correspondence Address	ELISE TENEN-AOKI GREENBERG TRAURIG LLP 2450 COLORADO AVENUE, SUITE 400 E SANTA MONICA, CA 90404 UNITED STATES laipmail@gtlaw.com
Submission	Motion to Strike
Filer's Name	Candice E. Kim
Filer's e-mail	kimce@gtlaw.com, mantellw@gtlaw.com, latm2@gtlaw.com
Signature	/cek/
Date	05/07/2012
Attachments	Petitioner's Motion to Strike Registrant's Reply and Exhibits (3).pdf ( 28 pages ) (726216 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Reg. Nos. 3,670,163, 3,755,678 and 3,755,679  
For the Marks: OVATION, OVATION & Design and OVATION & Design  
Registered August 18, 2009, March 2, 2010 and March 2, 2010

OVATION LLC, a Delaware limited liability company,

Petitioner,

V.

OVATION, INC., a Tennessee corporation,

Registrant.

Cancellation No.: 92-053,911

**PETITIONER’S MOTION TO STRIKE REGISTRANT’S REPLY**

Petitioner Ovation LLC (“Petitioner”), by and through its undersigned counsel, hereby submits its Motion to Strike (the “Motion”) Registrant Ovation, Inc.’s (“Registrant”) Reply Regarding Its Motion to Extend Remaining Deadlines, filed April 16, 2012 (the “Reply”). Registrant’s Reply contains several misstatements and mischaracterizations that prejudice Petitioner in this proceeding. Petitioner therefore respectfully moves to strike Registrant’s Reply in its entirety or, in the alternative, strike the misstatements contained in Registrant’s Reply.

## I. BACKGROUND

On March 27, 2012, Registrant filed a Motion for Extension of Deadlines (the “Original Motion”). On April 10, 2012, Petitioner filed its response by way of Opposition to Registrant’s Motion for Extension of Deadlines (the “Petitioner’s Response”). On April 16, 2012, Registrant filed its Reply, which contains several misstatements and mischaracterizations that prejudice Petitioner in this proceeding, thereby necessitating the filing of this Motion.

Registrant makes the following statements in its Reply that are either wholly inaccurate or completely misleading:

- “Petitioner did not serve Registrant with its Response to Registrant’s Motion” (*see* Reply at ¶1);
- “Registrant served its motion on Petitioner on March 26, 2012, before the deadline ran for expert disclosures” (*see* Reply at ¶2);
- Petitioner’s objections to an extension of discovery deadlines is without merit due to the parties’ previous requests for extensions in order to conduct settlement discussions (*see* Reply at ¶3a); and
- Petitioner’s assertion that the request for extension is caused by Registrant’s “own lack of diligence” is “self-serving” because it is “physically impossible” for Petitioner to accomplish its discovery within the then-current deadline (*see* Reply at ¶3b).

In view of the arguments and evidence set forth more fully below, Petitioner respectfully moves to strike Registrant’s Reply in its entirety or, at the very least, the statements identified above as these statements are either wholly inaccurate or misleading and prejudice Petitioner in this proceeding.

## **II. ARGUMENTS**

### **A. Petitioner Timely and Properly Served its Response on Registrant**

Registrant’s assertions that Petitioner did not serve Petitioner’s Response is completely false and should be stricken in its entirety. Attached as Exhibit A is the Certified Mail Receipt for Petitioner’s Response, served on April 10, 2012, which shows the address for Registrant’s counsel and tracking number for this service by mail (*i.e.*, 7008 0150 0000 8125 2034). Attached as Exhibit B is the return receipt card evidencing that someone at Registrant’s address

signed for and accepted delivery of the mail. Attached as Exhibit C is a snapshot of the U.S. Post Office website tracking and confirming the delivery of this mail, including an attempted delivery made on April 13, 2012 and then acceptance of delivery on April 17, 2012.

The parties did not agree to service by email and Petitioner did not have any obligation to serve by email.<sup>1</sup> However, as the attached evidence indicates, Petitioner timely and properly served Petitioner's Response on to Registrant by First Class Mail. Accordingly, Registrant's allegations to the contrary should be entirely stricken.

**B. Registrant Did Not Properly Serve its Original Motion on Petitioner on March 26, 2012**

Despite Registrant's contention, Registrant did not serve its Original Motion on Petitioner on March 26, 2012. Indeed, even the Certificate of Service for Registrant's Original Motion indicates that it served Petitioner on March 27, 2012. Attached as Exhibit D is a copy of Registrant's Original Motion including Certificate of Service which shows the date March 27, 2012.

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<sup>1</sup> 37 CFR § 2.119 states in pertinent part:

(b) Service of papers must be on the attorney or other authorized representative of the party if there be such or on the party if there is no attorney or other authorized representative, and may be made in any of the following ways:

- (1) By delivering a copy of the paper to the person served;
- (2) By leaving a copy at the usual place of business of the person served, with someone in the person's employment;
- (3) When the person served has no usual place of business, by leaving a copy at the person's residence, with a member of the person's family over 14 years of age and of discretion;
- (4) **Transmission by** the "Express Mail Post Office to Addressee" service of the United States Postal Service or by **first-class mail**, which may also be certified or registered;
- (5) Transmission by overnight courier.
- (6) ***Electronic transmission when mutually agreed upon by the parties.***

(Emphasis added).

On the evening of March 26, 2012, *after* Petitioner had served by mail and sent Registrant a courtesy copy by email its affirmative Expert Disclosures report, which, per the current schedule, was due that day, Registrant's counsel sent an email to Petitioner's counsel at 11:39 pm CDT stating that she would be filing her Original Motion the following day. Attached as Exhibit E is a true and correct copy of Registrant's email to Petitioner's counsel. The parties have not previously agreed to service by electronic transmission. Therefore, Petitioner's email, sent on March 26, 2012 at 11:39 pm CDT does not constitute proper service as delineated in 37 CFR § 2.119 and Registrant's claims that it served Petitioner on March 26, 2012 is inaccurate.

The date of filing and service of the Original Motion is relevant here because it determines whether a request is an extension of deadlines or a re-opening of a time period, which are assessed differently by the Board. If the request is a request to extend deadlines, *i.e.*, made *before* the expiration of a time period, then the movant must "set forth with particularity the facts said to constitute good cause for the requested extension." *See* T.B.M.P. 509.01(a); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 U.S.P.Q.2d 1925, 1927 (T.T.A.B. 1999). However, if the request is a request to re-open a time period that has expired, *i.e.*, made *after* the expiration of a time period, then the movant must show that its failure to act during the time previously allotted was the result of excusable neglect. *See* Fed. R. Civ .P. 6(b)(1)(B); T.B.M.P. 509.01(b)(1).

Because Registrant filed and served its Original Motion on March 27, 2012, *after* the deadline for Expert Disclosures closed, it must show that its failure was the result of excusable neglect. If Registrant is permitted to re-open the Expert Disclosures period in this proceeding based on its eleventh hour motion filed after Petitioner had complied with the current schedule and served its affirmative Expert Disclosures report, Petitioner will be prejudiced. Accordingly, Registrant's assertions that it served its Original Motion on March 26, 2012 should be stricken.

**C. Petitioner is Entitled to a Speedy Determination Affecting its Rights and Further Delay Would Prejudice Petitioner**

Registrant alleges that Petitioner's argument that it has a right to a speedy determination of this proceeding and will be prejudiced by an extension of deadlines is without merit because there have been three extensions of deadlines in this case "all at Petitioner's counsel's request." These three extensions, all prior to discovery, were pursuant to stipulation since the parties were actively engaged in settlement negotiations, which Petitioner had hoped would result in the quick resolution of this case without resort to a lengthy litigation. When settlement efforts failed, Petitioner had no choice but to continue enforcing and protecting its rights by moving forward with the instant proceeding.

Despite Registrant's assertions, the three prior extensions have absolutely no bearing on Petitioner's objection to a general extension of discovery deadlines or the merit of such arguments. If anything, Petitioner had always desired and continues to desire a quick resolution of this matter which is why it had hoped that the parties could have settled and concluded this matter during the period of settlement discussions.

**D. Registrant's Requests for an Extension of Discovery Deadlines is Necessitated by its "Own Lack of Diligence"**

Finally, Registrant's explanation surrounding Petitioner's request to "allow it to depose Registrant's witnesses outside the deadline for factual discovery" is misleading. Registrant attempts to discredit Petitioner's statement that the request for extension is caused by Registrant's "own lack of diligence" by indicating that Petitioner is the one that actually needs the extension in discovery deadlines. Registrant includes an email from Petitioner in which Petitioner requests that Registrant stipulate to a deposition after the discovery cut-off date, which was April 25, 2012. However, Registrant effectively offered only three (3) possible days that it

could take depositions of Petitioner's witnesses, namely between April 23, 2012 and April 25, 2012, because Registrant wanted to take these depositions *after* it received Petitioner's responses to its discovery, which were due on April 20, 2012<sup>2</sup> and, of course, prior to the close of discovery.<sup>3</sup>

Moreover, Registrant claimed that none of its witnesses could be available from April 5, 2012 through April 25, 2012 to take depositions. Attached as Exhibit F is a true and correct copy of the email correspondence between counsel for the parties. Accordingly, Petitioner had no meaningful choice but to request to stipulate to taking of depositions outside the discovery period. The limited availability of dates to take depositions prior to the close of discovery was caused by 1) Registrant's failure to serve its discovery requests earlier, and 2) its assertion that its client would not be available for deposition on any day between April 5, 2012 and April 25, 2012.<sup>4</sup>

Registrant's implication that the request for the stipulation is because it is "physically impossible" for Petitioner to accomplish its discovery within the then-current discovery deadline and masked by "self-serving assertions" that Registrant's request for an extension is "caused by its 'own lack of diligence'" is simply untrue and misleading and should therefore be stricken.

#### **E. Registrant Has Failed to Meet the Standard of Excusable Neglect**

Registrant's Reply is filled with misstatements and mischaracterizations in its attempt to smoke screen the issues and the simple facts that: 1) the time for taking required action expired (*i.e.*, the time for Expert Disclosures closed on March 26, 2012); and 2) because the time has

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<sup>2</sup> Registrant served its discovery requests on March 16, 2012, just five and a half weeks short of the close of discovery. Therefore, Petitioner's responses to Registrant's discovery came due on April 20, 2012, leaving Registrant only five days from the point when Petitioner's responses came due to the close of discovery.

<sup>3</sup> As April 21-22, 2012 was a weekend, Registrant effectively offered April 23-25, 2012 to take depositions of Petitioner's witnesses.

expired, Registrant must show that its failure to act during the time period previously allotted was the result of excusable neglect but has failed to do so. *See* Fed. R. Civ .P. 6(b)(1)(B); T.B.M.P. 509.01(b)(1). Registrant has failed to set forth “with particularity the detailed facts upon which its excusable neglect claim is based” as “mere conclusory statements are insufficient.” T.B.M.P. 509.01(b)(1); *HKG Industries Inc. v. Perma- Pipe Inc.*, 49 U.S.P.Q.2d 1156, 1158 (1997) (no factual details as to the date of counsel’s death in relation to plaintiff’s testimony period or as to why other lawyers in deceased counsel’s firm could not have assumed responsibility for the case). Accordingly, Registrant’s Reply should be stricken in its entirety.

### III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board strike Registrant’s Reply in its entirety. Alternatively, Petitioner respectfully requests that the Board strike the statements identified above and proven herein as inaccurate or misleading.

Respectfully submitted,

Dated: May 7, 2012

OVATION LLC

By: /Candice E. Kim/  
Wendy M. Mantell  
Candice E. Kim  
GREENBERG TRAURIG, LLP  
2450 Colorado Avenue, Suite 400E  
Santa Monica, California 90404  
Tel: (310) 586-7700  
Fax: (310) 586-7800

*Attorneys for Petitioner*

---

<sup>4</sup> The parties have stipulated to fact deposition dates after the April 25, 2012 cut off due to schedules.



**CERTIFICATE OF SERVICE**

I hereby certify that on May 7, 2012, a true and correct copy of the foregoing Petitioner's Motion to Strike Registrant's Reply was served via First Class Mail, postage prepaid, to counsel for Registrant:


Paige W. Mills  
BASS BERRY & SIMS PLC  
150 Third Avenue South, Suite 2800  
Nashville, TN 37201

/Candice E. Kim/

# **Exhibit A**

7006 0150 0000 8125 2034

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)  
For delivery information visit our website at [www.usps.com](http://www.usps.com)  
**OFFICIAL USE**

Postage	\$ 6.80	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Sent to: Paige W. Mills, BASS BERRY & SIMS PLC		
Street, Apt. No., or PO Box No. 150 Third Ave. South		
City, State, ZIP+4 Nashville, TN 37203		

## **Exhibit B**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Paige W. Mills  
BASS BERRY & SIMS PLC  
150 Third Ave. South  
Suite 2800  
Nashville, TN 37201

2. Article Number

(Transfer from service label)

7008 0150 0000 8125 2034

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

# **Exhibit C**

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## Track & Confirm

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YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
7008015000081252034		Delivered	April 17, 2012, 9:55 am	NASHVILLE, TN 37219	Certified Mail™
		Notice Left (No Authorized Recipient Available)	April 13, 2012, 10:19 am	NASHVILLE, TN 37219	
		Arrival at Unit	April 13, 2012, 10:05 am	NASHVILLE, TN 37219	
		Depart USPS Sort Facility	April 13, 2012	NASHVILLE, TN 37230	
		Processed through USPS Sort Facility	April 13, 2012, 4:20 am	NASHVILLE, TN 37230	

Check on Another Item

What's your label (or receipt) number?

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# **Exhibit D**



ESTTA Tracking number: **ESTTA463892**

Filing date: **03/27/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053911
Party	Defendant Ovation, Inc.
Correspondence Address	PAIGE W MILLS BASS BERRY & SIMS PLC 150 3RD AVENUE SOUTH, SUITE 2800 NASHVILLE, TN 37201 UNITED STATES pmills@bassberry.com
Submission	Motion to Extend
Filer's Name	Paige Mills
Filer's e-mail	pmills@bassberry.com
Signature	/paige mills/
Date	03/27/2012
Attachments	2 ovation motion use this one.pdf ( 3 pages )(85228 bytes )

The Registrant, Ovation, Inc. respectfully requests that the remaining deadlines in this matter be extended by sixty (60) days. Registrant makes this request on the basis that the associate attorney who has been working on this matter with undersigned counsel left for another position less than two weeks ago. Undersigned counsel needs the additional time to prepare this matter for trial in her absence, given her integral involvement in the matter thus far. In addition, Registrant would state that it served Plaintiff with written discovery on March 16, 2012, and has not yet received Plaintiff's responses because answers are not due until mid-April. Registrant would like the benefit of Plaintiff's responses to discovery in order to inform its analysis of Plaintiff's expert report to determine if it is necessary for Registrant to engage a rebuttal expert. In view of the foregoing, Registrant asks that all remaining deadlines be extended by 60 days. Thus, Registrant requests that the Board issue an order extending the deadline for expert disclosures as well as all remaining deadlines in this case. Specifically, Registrant asks that the schedule be amended as follows:

By:           /paige mills/            
Paige Waldrop Mills  
150 3<sup>rd</sup> Ave South  
Suite 2800  
Nashville, Tennessee 37201  
Telephone: (615) 742-6200  
*Attorneys for Registrant*

### CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March, 2012, I caused to be served a true and correct copy of the foregoing by the method by regular mail and email, addressed as follows:

Wendy Mantell, Esq.  
Greenberg Traurig LLP  
2450 Colorado Avenue  
Suite 400E  
Santa Monica, CA 90405  
mantellw@gtlaw.com

Elise Tenen-Aoki, Esq.  
Kacvinsky Daisak PLLC  
14271 Jeffrey Road, Suite 313  
Irvine, CA 92620  
etenenaoki@kdfirm.com



---

Paige W. Mills, Esq.  
Bass, Berry & Sims PLC

## **Exhibit E**

**Kim, Candice E. (Assoc-LA-IP-Tech)**

---

**From:** Kim, Candice E. (Assoc-LA-IP-Tech)  
**Sent:** Friday, May 04, 2012 10:03 PM  
**To:** Kim, Candice E. (Assoc-LA-IP-Tech)  
**Subject:** Ovation, LLC v. Ovation, Inc. Opposition No. 92053911  
**Attachments:** 10666443\_1.DOC.pdf

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**From:** Mills, Paige [mailto:PMills@bassberry.com]  
**Sent:** Monday, March 26, 2012 9:39 PM  
**To:** ESTTA@uspto.gov  
**Cc:** Elise Tenen-Aoki; Mantell, Wendy M. (Shld-LA-LT-IP-TECH)  
**Subject:** Ovation, LLC v. Ovation, Inc. Opposition No. 92053911

This filing is a Motion for Extension of Remaining Deadlines in the above Opposition. I have been trying to file this Motion via ESTA for the last three hours but the site is down. I have tried accessing the site through three different computers (at two different locations) and via an iPad, to no avail. Accordingly, I wanted to file this motion with you tonight via email. I will try to file it again via ESTA in the morning, assuming the site is back up. I am also serving it on opposing counsel tonight via email and regular mail. Thank you.

**Paige Waldrop Mills**

150 Third Avenue South, Suite 2800  
 Nashville, TN 37201  
 615 742 7770 • 615 742 0429 F • 615 429 8496 C  
 pmills@bassberry.com • www.bassberry.com

# BASS

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**From:** Mills, Paige  
**Sent:** Monday, March 26, 2012 10:46 PM  
**To:** Mills, Paige  
**Subject:** Ovation Motion to Extend

5/4/2012

## **Exhibit F**

**Kim, Candice E. (Assoc-LA-IP-Tech)**

---

**From:** Mills, Paige [PMills@bassberry.com]  
**Sent:** Wednesday, April 04, 2012 11:28 AM  
**To:** Kim, Candice E. (Assoc-LA-IP-Tech)  
**Cc:** Mantell, Wendy M. (Shld-LA-LT-IP-TECH)  
**Subject:** RE: Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)

Candice,

I would like to set up a deposition of your client's 30(b)(6) representative as well as your expert. I will prepare and send the notices once we agree on a date(s). While I will, of course, prepare a more formal notice, for purposes of your identifying the appropriate person to ask about deposition dates, the representative should have extensive knowledge of the topics below. Can you suggest some dates convenient to you and your client that would occur after your deadline to respond to our discovery requests? Thanks, Paige Mills

- Knowledge of the factual basis for all allegations in your client's petition for cancellation;
- Knowledge of facts relative to Petitioner's adoption and selection of the OVATION mark and all its iterations;
- Knowledge of facts relative to Petitioner's offering of goods and services and the range of goods and services offered under Petitioner's Marks and the dates when each respective good or service was offered;
- Knowledge regarding Petitioner's target or average customer and the buying behavior of those customers;
- Knowledge regarding Petitioner's channels of trade;
- Knowledge of any litigation or claims made regarding Petitioner's use of OVATION or any third party's use of OVATION;
- Knowledge regarding the geographic boundaries and market penetration achieved by your client's use of OVATION or any of its iterations in each of the following years: 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012;
- Knowledge of entities or individuals who previously owned or used Petitioner's Mark or any earlier iteration of it;
- Knowledge of the factual basis for asserting that your client's use of OVATION is likely to be confused with my client's use of OVATION for the goods and services set out in my client's registration.

**Paige Waldrop Mills**

150 Third Avenue South, Suite 2800  
 Nashville, TN 37201  
 615 742 7770 • 615 742 0429 F • 615 429 8496 C  
 pmills@bassberry.com • www.bassberry.com

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5/4/2012



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---

**From:** kimce@gtlaw.com [mailto:kimce@gtlaw.com]  
**Sent:** Tuesday, April 03, 2012 5:08 PM  
**To:** Mills, Paige  
**Cc:** MantellW@gtlaw.com  
**Subject:** Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)

Ms. Mills,

Please see the attached correspondence. We look forward to your prompt response.

Best,

Candice E. Kim  
Associate  
Greenberg Traurig, LLP | 2450 Colorado Avenue | Suite 400 East | Santa Monica, CA 90404  
Tel 310.586.3867 | Fax 310.586.0567  
[kimce@gtlaw.com](mailto:kimce@gtlaw.com) | [www.gtlaw.com](http://www.gtlaw.com)



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\*OPERATES AS GREENBERG TRAURIG MAHER LLP +OPERATES AS GREENBERG TRAURIG, S.C. ^A BRANCH OF GREENBERG TRAURIG, P.A., FLORIDA, USA

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5/4/2012

**Kim, Candice E. (Assoc-LA-IP-Tech)**

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**From:** Mantell, Wendy M. (Shld-LA-LT-IP-TECH)  
**Sent:** Monday, April 16, 2012 9:15 AM  
**To:** 'Mills, Paige'  
**Cc:** Kim, Candice E. (Assoc-LA-IP-Tech)  
**Subject:** RE: Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)

Paige:

The fact that you did not respond fully to our discovery requests when they were due in January absolutely prejudices us. That you now have supplemental material to send us and are waiting until the last minute to serve it, despite having received our letter two weeks ago, also prejudices us. Moreover, irrespective of when you received a letter outlining deficiencies in your discovery, you have an obligation to respond fully, and to supplement upon learning of new material that responds to our discovery requests.

With respect to depositions, you had asked us for dates after April 20th for deposition. Mr. Gutstein is not available from April 23-25. We will let you know today about any other witness. I find it hard to believe that Mr. Sifford has not had and will not have an available day for deposition from April 5 (when we made the request) through April 25. Nevertheless, if that is the case, then please confirm you will stipulate to a deposition date after the cut off date, and provide us with dates in the 2 weeks following April 25. Please also confirm that Mr. Sifford will act as your 30(b)(6) witness on all topics, or provide us with dates for any other witnesses.

Regards,  
 Wendy

Wendy M. Mantell  
 Shareholder  
 Greenberg Traurig, LLP | 2450 Colorado Avenue | Suite 400 East | Santa Monica, CA 90404  
 Tel 310.586.6522 | Fax 310.586.0522 | Cell 310.403.5793  
[mantellw@gtlaw.com](mailto:mantellw@gtlaw.com) | [www.gtlaw.com](http://www.gtlaw.com)




---

**From:** Mills, Paige [<mailto:PMills@bassberry.com>]  
**Sent:** Sunday, April 15, 2012 6:48 PM  
**To:** Kim, Candice E. (Assoc-LA-IP-Tech)  
**Cc:** Mantell, Wendy M. (Shld-LA-LT-IP-TECH)  
**Subject:** RE: Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)

Candice,

With all due respect, the fact that you served your discovery requests in December has nothing to do with anything. We answered your discovery on a timely basis and served you with hundreds of documents in January. You did not raise any objection to the discovery responses until the week I was out of the office on Spring Break in April. I immediately notified you of my unavailability and you continue to demand that we reply on your timetable, without regard to my schedule or my client's availability. We will respond to you as quickly as we are able.

Second, we have requested for more than two weeks the availability of two witnesses, which you have not provided. Please tell me which witness is not available from April 23 to 25. As for our witnesses, Mr. Sifford is not available before April 25<sup>th</sup> either. The other individuals that you have indicated that you

5/4/2012

would like to depose are not my clients. As indicated in our Rule 26 Disclosures, which contained their addresses, they are all located out of the country. I do not have authority to accept service for them. You will have to serve them as required under international law. Best, Paige Mills

---

**From:** kimce@gtlaw.com [mailto:kimce@gtlaw.com]  
**Sent:** Sunday, April 15, 2012 2:37 PM  
**To:** Mills, Paige  
**Cc:** MantellW@gtlaw.com  
**Subject:** RE: Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)

Paige,

Please send us the responses no later than Tuesday, April 17th. Given that our discovery was served in December of last year, we have already been and continue to be prejudiced by your client's late reply.

With respect to deposition dates, we are still checking on our witnesses' availability but we do know that one witness is not available from April 23-25th. We will advise soon on the other witness' availability for those dates. We assume that you will be taking these depositions where these witnesses are located, but please confirm.

Finally, following up on my email of the 11th, do you have the names of your witnesses, their locations and dates of availability for depositions prior to April 25th? Please advise as soon as possible.

We look forward to your prompt reply.

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**From:** Mills, Paige [mailto:PMills@bassberry.com]  
**Sent:** Friday, April 13, 2012 2:30 PM  
**To:** Kim, Candice E. (Assoc-LA-IP-Tech)  
**Subject:** RE: Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)

Candice, I anticipate having a response to your letter early next week. Can you please advise as to deposition dates? Thanks

---

**From:** kimce@gtlaw.com [mailto:kimce@gtlaw.com]  
**Sent:** Monday, April 09, 2012 9:54 PM  
**To:** Mills, Paige  
**Cc:** MantellW@gtlaw.com  
**Subject:** RE: Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)  
**Importance:** High

Paige,

As we did not receive a response to our email below, I am following up once more.

Please confirm that you will send us the outstanding documents and responses by this Friday.

Thank you.

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**From:** Kim, Candice E. (Assoc-LA-IP-Tech)  
**Sent:** Wednesday, April 04, 2012 1:42 PM  
**To:** Mills, Paige

5/4/2012

**Cc:** Mantell, Wendy M. (Shld-LA-LT-IP-TECH)  
**Subject:** RE: Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)

Paige,

As the close of discovery in this case is fast approaching, please send us the requested responses within ten (10) days. Please confirm that you will cure the deficient responses within ten (10) days. If we do not receive your responses within this time frame, we will have no other choice but to file a Motion to Compel.

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**From:** Mills, Paige [<mailto:PMills@bassberry.com>]  
**Sent:** Tuesday, April 03, 2012 3:19 PM  
**To:** Kim, Candice E. (Assoc-LA-IP-Tech)  
**Subject:** RE: Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)

Ms. Kim,

Thank you for your letter. I am out of the office most of this week for Spring Break. Also, as I mentioned in our motion to extend the deadlines of this matter, the associate who was responsible for this case has recently left the firm. Accordingly, I will not be able to respond to your letter in one week. I will have it to you as soon as practicable. Please feel free to call me if you have any questions. Thanks, Paige Mills

**Paige Waldrop Mills**  
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**From:** [kimce@gtlaw.com](mailto:kimce@gtlaw.com) [<mailto:kimce@gtlaw.com>]  
**Sent:** Tuesday, April 03, 2012 5:08 PM  
**To:** Mills, Paige  
**Cc:** [MantellW@gtlaw.com](mailto:MantellW@gtlaw.com)  
**Subject:** Ovation LLC v. Ovation Inc. (Proceeding No. 92-053,911)

Ms. Mills,

Please see the attached correspondence. We look forward to your prompt response.

Best,

Candice E. Kim  
Associate  
Greenberg Traurig, LLP | 2450 Colorado Avenue | Suite 400 East | Santa Monica, CA 90404  
Tel 310.586.3867 | Fax 310.586.0567  
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